No. 86-1678

In The
Supreme Court of the United States
October Term, 1986

HAROLD LEE MORRIS,

Petitioner,

v.

JOHN W. GARMON,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court for the State of Arkansas

BRIEF IN OPPOSITION FOR THE RESPONDENT

EDGAR E. BETHELL
BETHELL, CALLAWAY, ROBERTSON & BEASLEY
Attorneys at Law
P.O. Box 23
Fort Smith, Arkansas 72902
(501) 782-7911

Attorney for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTION PRESENTED

Does a state appellate court violate the full faith and credit clause of the United States Constitution if on appeal it refuses to consider an issue because it was not presented to the trial court?

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PART ONE

STATEMENT OF THE CASE

The case now before this Court was initiated January 26, 1984, when John Garmon filed in the Probate Court for Sebastian County, Arkansas, a Petition for Appointment of Administrator of the Estate of Alren I. Morrison, Deceased. (1 Tr. P. 2)

On March 2, 1984, Harold Lee Morris caused to be filed in the proceeding just identified a Demand for Notice of Proceedings for Appointment of Personal Representative. (1 Tr. P. 4) Attached to this document was a copy of a Texas Will, a copy of the Order of the Tarrant County, Texas, Probate Court admitting the Will to probate, and a copy of Letters Testamentary issued by that Court to Harold Lee Morris. (1 Tr. P. 4) On March 14, 1984, there was filed in the Probate Court for Sebastian County, Arkansas, by Harold Lee Morris a Response to Petition for Appointment of a Domiciliary Administrator in Arkansas. This pleading alleged that Mrs. Morrison was domiciled in Texas, that her Will had been admitted to probate in Texas, asked that it be admitted to probate in Arkansas, and if an Administrator were needed in Arkansas, that Harold Lee Morris be appointed. This pleading made no mention of the full faith and credit clause of the United States Constitution, nor was there any allegation of *res judicata*. (1 Tr. P. 13, *et seq.*)

Next, on March 26, 1984, there was filed a Petition for John W. Garmon alleging that Mrs. Morrison had been domiciled in Arkansas, and that her estate should be administered and distributed pursuant to the laws of Arkansas. (1 Tr. P. 23) Mr. Morris filed a response to this Petition repeating his prayer that the Texas Will be admitted to probate in Arkansas, and that if there were to be any administration in Arkansas, that he be appointed Administrator. (1 Tr. P. 25) There was no mention of the full faith and credit clause of the United States Constitution, nor any mention of the principle of *res judicata*.

On these pleadings, the matter came on for hearing before the Probate Judge for Sebastian County, Arkansas.

In his opening statement, counsel for Mr. Morris concluded with the following comment:

> "So, I think when it really boils down to the nuts and bolts, what we're concerned about, here, is where the domicile of the decedent was at the time of her death and whether this Court should assume jurisdiction over any of these matters that a Court of competent jurisdiction in a sister state has assumed initially under a doctrine of Court." (1 Tr. P. 55)

After hearing the testimony of the witnesses for both sides, the Probate Judge found that Mrs. Morrison was domiciled in Arkansas at the time the Texas Will was made, and also at the time of her death. She admitted the Texas Will to probate, apointed Merchants National Bank of Fort Smith, Arkansas, as Ancillary Administrator of the Estate, and ordered Mr. Morris to deliver the assets of the estate to the Arkansas Administrator. (1 Tr. P. 205-209) On July 26, 1984, an Order was entered containing findings of fact and directions consistent there with. (See Appendix A, App. 1, to this brief) It was from this Order that the first appeal was taken.

In the statement in his brief on appeal, Mr. Morris for the first time in the proceeding mentioned the full faith and credit clause of the United States Constitution. His first point stated:

> "I. THE SEBASTIAN COUNTY PROBATE COURT ERRED IN FAILING TO GIVE FULL FAITH AND CREDIT TO THE ORDER OF THE TARRANT COUNTY, TEXAS PROBATE COURT AND ORDERING THE INDEPENDENT EXECUTOR IN TEXAS TO DELIVER THE ANCILLARY ADMINISTRATOR ALL OF THE DECEDENT'S MONEY AND PROPERTY WHICH HAD COME INTO HIS HANDS AS INDEPENDENT EXECUTOR." (Appellant's First Brief P. 4)

His second and final point asserted that the finding that Mrs. Morrison was domiciled in Arkansas was erroneous. In this Brief, there was one passing reference to the principle of *res judicata.*

The Arkansas Supreme Court applied the well-established rule that points not presented to the trial court cannot be asserted on appeal. (Petitioner's Brief, Appendix 4) In addition, it held that even if the full faith and credit argument had been presented, the issue of domicile goes to the question of jurisdiction, and can be collaterally considered by another state without violating the full faith and credit clause.

Mr. Morris petitioned the Arkansas Supreme Court for a rehearing. This was denied. There was no move at that time to ask this Court for a Writ of Certiorari, although the status of the case and the active issues were fundamentally the same then as they are now.

The case was remanded by the Arkansas Supreme Court to the Sebastian County Probate Court about April 22, 1985. On August 7, 1985, Mr. Morris filed his Petition to Transfer Residue of Assets to Independent Executor in Texas. There was no hearing on this Motion, which was denied by the Probate Judge. Petitioner appealed this Order to the Arkansas Supreme Court. The record before the Arkansas Supreme Court on the second appeal was basically identical with the one which was before that Court in the previous appeal. The Arkansas Supreme Court held that its decision on the full faith and credit issue and the *res judicata* issue in the first appeal became the law of the case, and would not be reconsidered on a second appeal. (Petitioner's Brief, Appendix P. 10) It is

to review this decision that the Writ of Certiorari is requested.

PART TWO

REASONS WHY THE PETITION SHOULD BE DENIED

We submit that the Petition for Certiorari filed in this matter fails quite obviously to present any special or important reason why it should be granted. There is nothing to establish that the state court of last resort decided a federal question in a way in conflict with the decision of another state court of last resort, or of a federal court of appeals. Neither did the Arkansas Supreme Court, in either of its opinions, decide an important question of federal law which has not been, but should be, settled in this Court, nor did it decide a federal question in a way in conflict with the applicable decisions of this Court.

I. The question of domicile was presented to the Arkansas Probate Court by the Petitioner, and was decided by that Court based on the evidence before that Court.

To begin with, there was no contention ever made in the initial proceeding in the Probate Court for Sebastian County, Arkansas, that that court was legally bound by the full faith and credit clause of the United States Constitution to distribute all of the assets of the estate in accordance with the provisions of the Texas Will. The only issue actively litigated in that first and only hearing in the Probate Court was the domicile of Mrs. Morrison at the time of her death. (See Order entered by Honor-

able Bernice Kizer, Probate Judge, dated August 2, 1984, which is presented as an Appendix to this Brief.)

This Court has held that the courts of one state can review the question of domicile when that question has been answered by the court of another state without violating the full faith and credit clause of the United States Constitution. In *Burbank v. Ernest,* 232 U.S. 162, 58 L.Ed. 551, 34 S.Ct. 299 (1913), this Court held that the courts of Louisiana did not violate the full faith and credit clause of the United States Constitution when the Louisiana court refused to give effect to a Will which had been probated in Texas, on the ground that the testator was domiciled in Louisiana, notwithstanding the fact that a Texas court had held that the domicile of the decedent was in Texas. The decision in the *Burbank* case was relied on by the Arkansas Supreme Court in its first opinion in this case, and was also applied by the Court of Appeals for the Fifth Circuit in 1971 in the case of *Diehl v. United States,* 5th Cir., 438 F.2d 705 (1971), in which it was said:

> "Where jurisdiction depends upon domicile that question is also open to re-examination, even upon contradictory evidence, *Burbank v. Ernest,* 1914, 232 U.S. 162, 34 S.Ct. 299, 58 L.Ed. 551, expressly followed in *Barney v. Huff,* 326 S.W.2d 617, 621 (Tex.Civ.App. 1959)."

Thus, it appears clear that the Probate Court and the Arkansas Supreme Court were completely justified in ruling on the issue of domicile, since it was squarely and definitely presented to those courts by the Petitioner.

II. Appellate courts are not required by the United States Constitution to consider issues not presented in the trial court.

The issues of full faith and credit and *res judicata* were never mentioned in the first proceeding in the Sebastian County Probate Court. The first time these issues were mentioned was in the Brief filed on behalf of Mr. Morris by his new attorney in his appeal from the Order of the Sebastian County Probate Court entered August 2, 1984, finding that Mrs. Morrison was domiciled in Arkansas, and that Arkansas law should govern distribution of the assets of the estate. The Arkansas Supreme Court found that neither the full faith and credit, nor the *res judicata* issue, were presented to, nor ruled on, by the Probate Judge, and as a consequence, could not be raised for review on appeal. *Morris v. Garmon* (1985), 285 Ark. 259, 686 S.W.2d 396, 398 (Petition, Appendix P. 4-5).

The rule, or practice, that appellate courts will not on appeal consider arguments, contentions, or issues not presented to and ruled on by the trial court, appears to be one universally followed by both state and federal courts, with possibly rare exceptions. *See* 5 Am.Jur.2d, Appeal and Error, § 545. The rule has long been in effect in Arkansas, and has been invoked many times.

One of the more recent cases on the subject decided by the Arkansas Supreme Court, and which also involved an attempt to invoke a constitutional question for the first time on appeal, is *Chapin v. Stuckey* (1985), 286 Ark. 359, 692 S.W.2d 609, 615. In that case, the Arkansas Supreme Court said:

> "A final argument is that the appointment of a receiver was, in effect, the appointment of a conservator in violation of Arkansas law and the due process clause of the federal and state constitutions. * * *
>
> "The argument was not, however, first offered to the trial court and may not, therefore, be made on appeal. Even arguments of constitutional dimension must be argued below if they are to be preserved on appeal. *May v. Barg,* 276 Ark. 199, 633 S.W.2d 376 (1982); *Williams v. Edmonson,* 257 Ark. 837, 520 S.W. 2d 260 (1975); *Arkansas Memorial Gardens, Inc. v. Simpson,* 238 Ark. 184, 381 S.W.2d 462 (1964)."

The same rule and practice is followed by the federal courts. *See Drainage District No. 2 of Crittenden County, Arkansas, et al. v. Mercantile-Commerce Bank & Trust Co. of St. Louis, Missouri,* (8th Cir. 1934), 69 F.2d 138, cert. den. 293 U.S. 566, 55 S.Ct. 77, 79 L.Ed. 665. Again, in *Sisco v. McNutt,* (8th Cir. 1954), 209 F.2d 550, 553, the Court said:

> "* * * The general and almost invariable rule is that questions not called to the attention of or ruled upon by a trial court will not be reviewed on appeal. * * *"

Thus, the failure of the Petitioner to present to the Probate Judge the issues of full faith and credit and *res judicata* clearly justified the Arkansas Supreme Court in declining to consider these matters on appeal.

After the opinion of the Arkansas Supreme Court was filed, Petitioner filed a Petition for Rehearing asking that the Arkansas Supreme Court reconsider its rulings on the full faith and credit and *res judicata* contentions. The request for rehearing was denied on April 22, 1985.

If Petitioner believed that he was being denied his constitutional rights, he could and should have filed his Petition for a Writ of Certiorari with this Court at that time. Instead, the case was remanded to the Sebastian County Probate Court on April 22, 1985, for such further proceedings as might be required to complete administration of the estate.

On August 7, 1985, Petitioner filed in the Sebastian County Probate Court his Petition to Transfer Residue of Assets to Independent Executor in Texas. In this Petition, he alleged that the Order of the Probate Court of Tarrant County, Texas, was entitled to full faith and credit as to assets that were located outside of the State of Arkansas, and that the Order of the District Court of Cleveland County, Oklahoma, was *res judicata* as to all issues that were determined, or which could have been determined, as to assets located outside of the State of Arkansas.

On February 13, 1986, the Probate Judge entered an Order denying the Petition to Transfer Assets, noting "that the assertion in the Petition that the full faith and credit clause of the U.S. Constitution binds this Court to comply with orders of a Probate Court of Tarrant County, Texas, was presented to and denied by the Arkansas Supreme Court in the case mentioned above; that the assertion that this Court is bound by the principle of *res judicata* to comply with an Order of the District Court of Cleveland County, Oklahoma, was also disposed by the opinion of the Arkansas Supreme Court mentioned above. * * *" (See Appendix B, App. 7, to this brief)

Again, the Order of the Probate Judge was appealed to the Arkansas Supreme Court. Again, the issues of full faith and credit and *res judicata* were asserted as grounds for reversal. The opinion of the Arkansas Supreme Court points out that these same contentions were made in the first appeal, that they were disposed of by the first opinion of the Arkansas Supreme Court, as a result of which the Court declined to review them again. (*See* Petition, Appendix P. 10-12)

We also call attention to the fact that all court records from Texas and Oklahoma referred to on the second appeal were part of the record on the first appeal, although only the Order of the Tarrant County, Texas, Probate Court admitting the Morrison Will to probate, and appointing Mr. Morris as Executor, was referred to by appellant on his first appeal.

At this point, we would also call attention to the fact that full faith and credit was in fact accorded to the Order of the Tarrant County, Texas, Probate Court admitting to probate the Will of Alren Morrison, executed in Texas. We also note that there had never been any hearing or any order by a Texas court dealing with the subject of the distribution of the assets of the estate. All that had been done in Texas was to admit the Will to probate and appoint Mr. Morris executor. This was done November 28, 1983. At that time, most of the intangible assets of the estate were in Oklahoma, not Texas, and remained there until February of 1984. The probate proceeding in Arkansas was begun January 26, 1984, and Mr. Morris voluntarily entered his appearance in that proceeding. Thus, when the question of domicile and the right to inherit the

assets of the estate were decided, all parties were before the Probate Court of Sebastian County, Arkansas, and the intangible assets were placed in the custody of the Sebastian County Probate Court without objection by Mr. Morris.

III. Application of the principle "the law of the case" does not give rise to a question of federal law.

In commenting on his second appeal to the Arkansas Supreme Court, Petitioner takes exception to the position taken by the Arkansas Supreme Court holding that the decision on the first appeal becomes the law of the case, and is conclusive of every question of law or fact decided in the former appeal, and also of those questions which might have been, but were not presented. Petitioner asserts that this presents "an important question of federal law which should be settled by this Court."

It appears to us that this question was long ago settled by this Court. The Arkansas Supreme Court's decision in *Miller Lumber Company v. Floyd*, 169 Ark. 473, 275 S.W. 741 (1925), applied this principle on a second appeal, saying:

> "* * * Whether this decision was right or wrong, it is the law of the case; it is *res judicata*. The rule has been long established in this State and uniformly adhered to that in the same cause this court will not reverse nor revise its former decisions. (Citing cases) This general rule is grounded on public policy, experience, and reason. If all questions that have been determined by this court are to be regarded as still open for discussion and revision in the same cause, there would be no end of their litigation until the financial ability of the parties and the ingenuity of their coun-

> sel had been exhausted. A rule that has been so long established and acted upon and that is so important to the practical administration of justice in the courts should be followed and not departed from."

The decision in the *Miller* case was appealed to this Court, where it was affirmed *per curiam* in *Miller Lumber Company, et al. v. W.E. Floyd, et al.,* (1927), 273 U.S. 672, 47 S.Ct. 475, 71 L.Ed. 833.

Even more significant to the situation now before this Court is the decision of the Arkansas Supreme Court in *Bedell v. State of Arkansas,* 260 Ark. 401, 541 S.W.2d 297 (1976), in which, on a second appeal, the Arkansas Supreme Court said:

> "Our ruling upon the first appeal, that the prohibition against unreasonable searches and seizures does not extend to open fields and forested areas, has become the law of the case and will not be re-examined. The doctrine known as the law of the case applies to issues of constitutional law. *Feldman v. State Board of Law Examiners,* 256 Ark. 384, 507 S.W.2d 508 (1974); *Miller Lumber Co. v. Floyd,* 169 Ark. 473, 275 S.W. 741 (1925), affirmed, 273 U.S. 672, 47 S.Ct. 475, 71 L.Ed. 833 (1927). Hence it is immaterial that a federal court, after our decision upon the first appeal in this case, decided the point the other way. *United States ex rel. Gedko v. Heer,* 406 F.Supp. 609 (W.D. Wis. 1975). If the appellant thought our first decision to be wrong, he had the opportunity to seek a review by the United States Supreme Court."

As we have pointed out previously, the same issues were before the Arkansas Supreme Court in the first appeal as were presented in the second appeal, yet after the first decision, followed by a petition for rehearing, which was denied, the Petitioner elected to ignore the opportunity

to ask this Court for a Writ of Certiorari. Having passed that opportunity, we submit that the Petitioner is not entitled to a second bite at the apple.

We now touch briefly on the judicial precedents offered in support of the Petition. The assertion in Petitioner's brief that the case of *State, ex rel. Attorney General v. Wright,* 194 Ark. 652, 109 S.W.2d 123 (1937), should control the result in this case is patently erroneous. In the *Wright* case, the maker of a will died in Hot Springs, Garland County, Arkansas. His will was probated in Grayson County, Texas, where the majority of his assets were located. Subsequently, the State of Arkansas filed a Petition for administration in the Probate Court for Garland County, Arkansas, alleging that the will admitted to probate in Texas was a forgery, and should be ignored.

On appeal, the Arkansas Supreme Court held that a substantial portion of a decedent's assets was located in Texas at the time of his death, the Court of the county in which his principal property was located had jurisdiction to admit the will to probate, and that the order granting probate was not subject to collateral attack in Arkansas because the Texas order was entitled to full faith and credit.

The obvious distinction between the *Wright* case and the case under review by this Court is that in this case the Order of the Texas court admitting the Texas Will to probate was in fact given full faith and credit, and was admitted to probate in Arkansas. In addition, the question presented to the probate court in Arkansas was one of "domicile," not the validity of the Texas Will, and the opinion in the *Wright* case specifically recognizes that

the question of "domicile" can be decided by a second state without violating the full faith and credit clause of the United States Constitution.

Durfee v. Duke, 375 U.S. 106, 95 L.Ed. 552, 71 S.Ct. 474 (1951), is cited for the proposition that *res judicata* may present a federal question under the full faith and credit clause. In the *Durfee* case, this Court held that a judgment of the court of one state is entitled to full faith and credit, even as to questions of jurisdiction, when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment. There is nothing in the record of the Morrison case to indicate that the issue of domicile was fully and fairly litigated in the Probate Court of Tarrant County, Texas.

Johnson v. Muelberger, 340 U.S. 584, 96 L.Ed. 552, 71 S.Ct. 474 (1951), certainly affirms that this Court is the final arbiter of questions raised under the full faith and credit clause, but it does not reject the general rule that such issues must be raised in the trial court if they are to be reviewed on appeal.

Frankly, it appears to us that the Petitioner has engaged in a process of attempting to garner for himself at least all of the assets that were not located in Arkansas at the time of the death of the decedent, although initially he was claiming everything she owned, relying on a Will he had her make just a few days after he moved her from a nursing home in Norman, Oklahoma, to another nursing home in Forth Worth, Texas, his place of residence. Having failed after two attempts in the Sebastian County Probate Court, and three requests to the Arkansas Supreme

Court, it now appears that if he can't get the assets himself, he will at least diminish what the two young granddaughters will finally get by generating legal expenses, and in any event, he will delay ultimate delivery to them.

CONCLUSION

We respectfully request that the Petition for Writ of Certiorari be denied. In addition, we submit that this Petition for Writ of Certiorari is so patently frivolous that this Court should award the Respondent appropriate damages pursuant to Rule 49.2.

Respectfully submitted,

Edgar E. Bethell
Bethell, Callaway, Robertson & Beasley
Attorneys at Law
P.O. Box 23
Fort Smith, Arkansas 72902
(501) 782-7911

Attorney for Respondent

APPENDIX A

IN THE PROBATE COURT OF SEBASTIAN COUNTY, ARKANSAS

FORT SMITH DISTRICT

IN THE MATTER OF THE ESTATE OF

ALREN IRIS MORRISON, Deceased No. P 84-27

O R D E R

ON the 26th day of July, 1984, this matter came on for hearing. The Petitioner, John Garmon, and his wards, Kristen Lee Garmon and Katherine Lynn Garmon, appeared in person and by their attorney, Edgar E. Bethell. The Respondent, Harold Lee Morris, and his brother, Donold Morris, appeared in person and by their attorney, Richard L. Martin. After reviewing the pleadings, hearing the testimony of witnesses for both sides, and considering all of the exhibits, the Court makes the following findings of fact and conclusions of law:

1. Alren Iris Morrison, deceased, was for many years a resident of Fort Smith, Arkansas, and she, and her husband, Lem Morrison, deceased, occupied their own home located at 1532 South 40th Street in Fort Smith, Arkansas. Lem Morrison passed away in 1978, leaving his widow alone in the home. They had no relatives in Fort Smith. Their daughter, Andrea Garmon, now deceased, lived in Norman, Oklahoma. In 1979, Alren Iris Morrison fell in her home and broke her hip. When she was ready to leave the hospital, there was no one to care for her in her home, so her daughter, Andrea Garmon, took her to Norman, Oklahoma, where Andrea lived, and placed her in a nursing home.

2. Andrea Garmon died rather suddenly in September of 1979. On October 2, 1979, Alren Iris Morrison's brother, Harold Morris, came to Norman, Oklahoma, and moved her to Fort Worth, Texas, where he lived, and put her in a nursing home. While in the Fort Worth, Texas, nursing home, she fell again and broke either a leg or a hip, which materially set back any recovery, to the extent that she might otherwise have returned to her home in Fort Smith, Arkansas. She was visited in the Fort Worth, Texas, nursing home two or three times a year by her son-in-law, John Garmon, and her two grandchildren, Kristen Lee and Katherine Lynn Garmon, daughters of deceased Andrea Garmon.

3. Shortly after she was taken to Fort Worth, Texas, she executed a Last Will and Testament on November 23, 1979, by the terms of which her entire estate was left to her brother, Harold Morris. The grandchildren were not mentioned in the Will, by name or classification. After her death, the Will of Alren Iris Morrison was filed for probate in Tarrant County, Texas, was admitted, and Harold Morris was appointed Independent Executor.

4. On January 26, 1984, Petitioner filed herein a Petition for Appointment of an Administrator of the estate of Alren Iris Morrison, deceased, alleging that the deceased was domiciled in Fort Smith, Arkansas, at the time the Will was made, and at the time of her death. A Response to the Petitioner's request was filed on behalf of Harold Lee Morris, asserting that the deceased was domiciled in Texas, and that her Will should be construed, and her estate should be administered, pursuant to the laws of Texas.

5. After Alren Iris Morrison was moved to Norman, Oklahoma, and thereafter while being cared for in the Fort Worth, Texas, nursing home, she caused her home in Fort Smith, Arkansas, to be maintained in a ready-to-return condition. None of the furniture was ever removed, some of the utilities were kept on, her car was parked in the driveway under a carport, the yard was regularly maintained, she maintained her membership in the First United Methodist Church of Fort Smith, Arkansas, and on numerous occasions expressed to her grandchildren and others her wish, hope, and desire to return to her home in Fort Smith, Arkansas, and to be with her friends, and engage in her normal activities. The Court finds that her domicile was in Fort Smith, Arkansas, at the time she made the Will in Fort Worth, Texas, and at the time of her death, and that the Will should be construed, and the estate should be administered, pursuant to the laws of the State of Arkansas.

6. The Court finds that the decedent left no children surviving her, but that she did leave two grandchildren, the children of her deceased daughter, Andrea Garmon. These grandchildren, Kristen Lee Garmon and Katherine Lynn Garmon, are not mentioned or named, individually or by classification, in the Will executed November 23, 1979; that they are under the laws of the State of Arkansas pretermitted children; and that they are entitled to the share of the estate of Alren Iris Morrison, deceased, which would pass to them under the Arkansas law of descent and distribution.

7. The passage of title to the real estate located in the State of Arkansas is also governed by the laws of the State of Arkansas.

Being well and sufficiently advised in the premises, it is

ORDERED that the Will of Alren Iris Morrison which was admitted to probate in Tarrant County, Texas, should be and the same is hereby admitted to ancillary probate in the Fort Smith District of Sebastian County, Arkansas; it is further

ORDERED that Merchants National Bank of Fort Smith, Arkansas, be and it is hereby appointed Ancillary Administrator of the estate of Alren Iris Morrison, deceased, and being a bank whose deposits are insured by the Federal Deposit Insurance Corporation, no bond will be required, and the Clerk of this Court shall forthwith issue Letters of Administration to Merchants National Bank upon the filing of an Acceptance of Appointment by said Bank; it is further

ORDERED that Harold Lee Morris of Fort Worth, Texas, shall forthwith, upon demand by the Administrator, file in this proceeding a detailed inventory of the money and property of Alren Iris Morrison which has come into his possession, together with a detailed statement of any expenditures or other disposition of the property of the deceased which has been made by him; it is further

ORDERED that upon demand by Merchants National Bank, Harold Morris shall immediately deliver to Merchants National Bank of Fort Smith, Arkansas, all of the money and property of Alren Iris Morrison which has come into his possession; it is further

ORDERED that administration of this estate, and the distribution of the assets of the same, shall be in accordance with the laws of the State of Arkansas.

Entered this 2nd day of August, 1984.

/s/ Bernice L. Kizer
PROBATE JUDGE

APPENDIX B

IN THE PROBATE COURT OF SEBASTIAN COUNTY, ARKANSAS

FORT SMITH DISTRICT

IN THE MATTER OF THE ESTATE OF

ALREN I. MORRISON, Deceased No. P 84-27

O R D E R

ON this 13th day of February, 1986, comes on for consideration the Petition of Harold Lee Morris requesting this Court to order Merchants National Bank of Fort Smith, Arkansas, Administrator of this estate, to transfer to the possession of the Petitioner 462 shares of the common stock of Foremost-McKesson, Inc., and 616 shares of the preferred stock of said corporation, and $2,944.93 cash. Response to this Petition was filed on behalf of the Ancillary Administrator, Merchants National Bank.

Based on the record in this case, the Court finds that it has been established by the decision of the Arkansas Supreme Court in the case of *Harold Lee Morris vs. John Garmon*, 285 Ark. 259, 686 S.W.2d 396 (1985) that the decedent, Alren Iris Morrison, was domiciled in the State of Arkansas at the time of her death; that the grandchildren of the decedent were pretermitted heirs of the decedent, and that under the laws of the State of Arkansas, they are entitled to inherit all of the assets of the estate of the decedent; that the assertion that the full faith and credit clause of the United States Constitution binds this Court to comply with orders of a Probate Court of Tarrant County, Texas, was presented to and denied by the Ar-

kansas Supreme Court in the case mentioned above; that the assertion that this Court is bound by the principle of *res judicata* to comply with an Order of the District Court of Cleveland County, Oklahoma, was also disposed of by the opinion of the Arkansas Supreme Court mentioned above.

This Court further finds that the Petitioner, as Texas Executor of the Estate of Alren I. Morrison, has not filed a Bond in Arkansas or Texas; that under the laws of the State of Texas, he is an Independent Executor whose handling of the estate's assets is subject to very little supervision by the Texas Probate Court. On the contrary, Merchants National Bank, Ancillary Administrator, has insurance coverage on the assets of this estate through the Federal Deposit Insurance Corporation which insures proper handling of this estate in an amount in excess of the value of the assets in its hands.

This Court further finds that no meritorious reason has been offered by Petitioner to support his request that some of the assets in the hands of the Ancillary Administrator should be turned over to him. All of the assets are to be distributed to the two grandchildren. There are no claims against the estate, other than the final costs of administration. The estate is ready for final distribution and closing. There is no reason to incur further delay and additional costs which will reduce the amounts which would be received by the heirs, by placing some of the assets in the hands of the Texas Executor. Being well advised in the premises, it is

ORDERED that the Petition of Harold Lee Morris to require Merchants National Bank to deliver to him some

of the assets of this estate be, and the same hereby is, denied; and it is further

ORDERED that the Ancillary Administrator proceed with dispatch to take such actions as may be necessary to make final distribution of the assets of this estate, and to close this administration.

Entered this 13th day of February, 1986.

/s/ Bernice L. Kizer
Honorable Bernice L. Kizer
Probate Judge